

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BURKINA WEAR, INC.

Plaintiff,

v.

CAMPAGNOLO S.R.L.

Defendant.

:
:
:
:
:
:
:
:
:
:
:
:

07 cv 3610 (HP) (RWS)

**DEFENDANT'S MOTION TO DISMISS
PURSUANT TO RULE 12(b)(6)**

PLEASE TAKE NOTICE that for the reasons set forth in its accompanying Memorandum of Law, Defendant Campagnolo S.r.l. ("Campagnolo"), by and through its attorneys, hereby moves this Honorable Court to dismiss Count IV (declaratory relief for dismissal of pending T.T.A.B. proceedings) and Count V (declaratory relief for cancellation of Campagnolo 's U.S.P.T.O. application Serial No. 78/568,676 to register CAMPY) of the Plaintiff Burkina Wear, Inc's Complaint filed in this matter, pursuant to Fed.R.Civ.P. 12(b)(6).

/

/

/

/

/

/

/

Respectfully submitted,

By: /s/Jeffrey A. Lindenbaum
Matthew C. Wagner (MW-9432)
Jeffrey A. Lindenbaum (JL-1971)
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
Tel. (914) 941-5668
Fax. (914) 941-6091

John J. O'Malley, Esq.
Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103
Tel: (215) 568-6400
Fax: (215) 568-6499

Attorneys for Defendants